

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION OF CHACO
COMPRESSOR STATION (HARVEST FOUR CORNERS)
FOR AN AIR QUALITY PERMIT, NO. P239R3 (TITLE V)** **Case No. AQB 21-37**

**IN THE MATTER OF THE APPLICATION OF CARRACAS
CDP COMPRESSOR STATION (HARVEST FOUR
CORNERS) FOR AN AIR QUALITY PERMIT, NO. P168R4** **Case No. AQB 21-43**
(TITLE V)

**HARVEST FOUR CORNERS, LLC’S CLOSING ARGUMENT AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant Harvest Four Corners, LLC (“Harvest” or “Applicant”) respectfully submits the following Closing Argument, and Proposed Findings of Fact and Conclusions of Law in the above-captioned matters, pursuant to 20.1.4.500.B. NMAC.

INTRODUCTION

These matters come before Hearing Officer Gregory Chakalian on the requests for hearing made by WildEarth Guardians (“Guardians”) on March 19, 2021 for the Chaco Compressor Station (“Chaco”), [Chaco AR 11, 608], and on May 25, 2021 for the Carracas CDP Compressor Station (“Carracas”), [Carracas AR 10, 387]. The Secretary of the Environment Department granted the requests for hearing on June 4, 2021. [Chaco AR 14, 613-615; Carracas AR 13, 394-396]. Pursuant to the Scheduling Order of July 20, 2021, the Chaco and Carracas permit challenges were scheduled for a hearing on the same date, which was held on November 15, 2021.

Guardians challenges the issuance of the draft operating permits (also known as Title V

permits)¹ for both the Chaco facility and Carracas facility (collectively, the “Draft Permits”) requested by Harvest. As demonstrated below, Guardians has failed to meet its burden in opposition to issuance of the two permits. In contrast, the New Mexico Environment Department (“NMED” or the “Department”) and the Applicant have met their respective burdens in support of the Draft Permits. Accordingly, NMED’s determination to issue the Draft Permits should be upheld.

BACKGROUND

I. Operating Permits and Requirements for Renewals and Significant Modifications

An operating permit is required for sources that meet the definition of “major source” under 20.2.70.7.R. NMAC. 20.2.70.200.A. NMAC. Operating permits generally do not impose new substantive requirements, but clarify into a single document which air quality requirements apply to the source and provide methods for assessing the source's compliance with those requirements. EPA made this clear:

While title V generally does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act.

57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

This matter involves the following actions on the Draft Permits: 1) the renewal of and significant modification to the Chaco operating permit; and 2) the renewal of the Carracas operating permit. As defined in Title 20, Chapter 2, Part 70 (the “Operating Permit Regulations”), “[r]enewal’ is the process by which a permit is reissued at the end of its term.”

¹ Operating permits are often referred to as “Title V” permits, which is a reference to Subchapter V of the federal Clean Air Act establishing the operating permit program at 42 U.S.C. § 7661-7661f.

20.2.70.7.AD. NMAC. The term of an operating permit is set at five years. 20.2.7.302.B.

NMAC. Because changes at the permitted source can and are often made during the five-year term, the Operating Permit Regulations provide various mechanisms for permit modifications depending on the significance of the change. For non-administrative or non-minor

modifications, a permit must go through the significant permit modification mechanisms at

20.2.70.404.C. NMAC. Of note, “significant permit modification shall meet all requirements of this Part for permit issuance, including those for applications, public participation, review by affected programs and review by the Administrator.” 20.2.70.404.C.(5). NMAC.

For both renewals and significant modifications, the applicant must ensure that operating permit applications include the information and meet the requirements detailed in 20.2.70.300.D. NMAC. Moreover, as discussed in more detail below, to be approved, NMED must provide certain notices, make specific determinations, and ensure that the permit contains certain provisions for approval. *See* 20.2.70.302 and 20.2.70.400. NMAC.

II. FACILITIES AND PERMIT APPLICATIONS

A. Chaco Compressor Station

The Chaco facility is an existing compressor station located in San Juan County, New Mexico. Harvest Ex. 1 at 3. Chaco currently operates under an NSR construction permit, 0759-M6, dated October 12, 2018 and a Title V operating permit, P236-R2, dated August 19, 2016, issued by NMED. [Chaco AR 1, 005]; Harvest Am. Ex. 2 at 3.

Harvest submitted a Title V modification application on October 1, 2019 [Chaco AR 1, 001-211] to incorporate changes permitted in 2018 through a revision to Chaco’s new source review (“NSR”) permit 0759-M6. NMED Ex. 15 at 3. This significant modification requested incorporation of the NSR permitted changes, including increasing condensate throughput at the

facility, adding one pig receiver, and increasing SSM emissions (to allow for a richer gas stream). [Chaco AR 1, 001-211]; Harvest Am. Ex. 2 at 4. NMED received the application on October 2, 2019 and deemed the application administratively complete on November 25, 2019. [Chaco AR 4, 528].

NMED reviewed the application and prepared the draft Chaco operating permit under consideration (proposed Permit Number P236-R3). [Chaco AR 7, 554-599]; Harvest Am. Ex. 2 at 4. In April 2020, the application was revised to add an alternative operating scenario (“AOS”) for condensate throughput, which was permitted in the existing NSR permit, but inadvertently left out of the original Title V application. [Chaco AR 2, 212-527]; Harvest Am. Ex. 2 at 4. The application was updated again in May 2020 from a modification application to a joint renewal and modification application. [Chaco AR 35, 672-673]; Harvest Am. Ex.2 at 4. Most recently, in September 2021, a second revision to the application was provided to NMED. At NMED’s request, 14 pneumatic controllers were included in Table 2-B of the application as insignificant sources. [Chaco AR 41 at 693-694]; Harvest Ex. 2 at 4.

Finally, NMED removed the hourly emissions limit on truck loadout in the draft permit, which was an error as condensate load emissions in NSR and Title V air quality permits are limited and tracked based on annual throughputs rather than hourly throughputs. NMED Ex. 5 at 7. Therefore, the hourly emission limit on truck loadout was removed in the most recent version. *See* NMED Ex. 16 at A7, Table 106.A. (Unit L1).

B. Carracas CDP Compressor Station

Carracas is an existing oil and gas facility located in Rio Arriba County, New Mexico, which compresses and dehydrates pipeline quality natural gas received from independent producers. Harvest Ex. 1 at 4. Carracas currently operates under NSR construction permit, 968-

M5-R7, issued October 12, 2017, and Title V operating permit, P168-R3, issued January 5, 2016. [Carracas AR 1, 005]; Harvest Am. Ex. 2 at 5.

Harvest submitted an operating permit renewal application for the Carracas facility on December 7, 2019. [Carracas AR 1, 001-252]; Harvest Am. Ex. 2 at 5-6. The renewal incorporates previously permitted administrative changes to Carracas's NSR permit, which included like-kind replacement of three engines. [Carracas AR 1, 001-252]; Harvest Am. Ex. 2 at 5-6. NMED received the application on December 10, 2019 and deemed the application administratively complete on January 29, 2020. [Carracas AR 3, 299].

NMED reviewed the application and prepared the Carracas Title V renewal permit under consideration (proposed Permit Number P168-R4). [Carracas AR 6, 322-363]; Harvest Am. Ex. 2 at 5-6. In March 2021, the application was revised to include the removal of four engines, the removal of four dehydrators and four associated reboilers, and the removal of two flares, units which had already been removed from the NSR permit. [Carracas AR 2, 253-298]; Harvest Am. Ex. 2 at 6. A second revision to the application was provided to NMED in September 2021. At NMED's request, 24 pneumatic controllers were added to the application in Table 2- B of the application as insignificant sources. [Carracas AR 32, 464-465]; Harvest Am. Ex. 2 at 6.

III. GUARDIANS COMMENTS AND REMAINING ISSUES

Guardians submitted written comments on both Draft Permits, raising substantially the same issues. [Chaco AR 11, 607-608; Carracas AR 10, 387-388]. For Chaco, Guardians identified the following issues: 1) enforceability of startup, shutdown, and malfunction emission limits; 2) use of natural gas for opacity limit compliance; 3) inclusion of "all points of air pollution" in the permit; 4) periodic monitoring to ensure compliance with applicable hourly emission limits; and 5) NMED's alleged failure to demonstrate that recent new source review

(“NSR”) permitting actions will not lead to emissions that cause or contribute to violations of the national ambient air quality standards (“NAAQS”), including ozone and nitrogen dioxide.

[Chaco AR 11, 608]. For Carracas, the comments were substantively the same as those submitted for Chaco, except that the fifth comment was excluded. [Carracas AR 10, 388].

Prior to submittal of written testimony, Harvest filed a Motion in Limine requesting that, based on the comments, Guardians be restricted from presenting evidence on the NAAQS.

Guardians provided a written response, and a hearing was held by the Hearing Officer. Hearing Officer Chakalian granted the motion in part and denied it in part, holding:

WildEarth Guardians’s testimony related to the discrete issue of whether the Chaco Compressor Station and the Carracas CDP Compressor Station cause or contribute to a violation of the ozone national ambient air quality standards or New Mexico ambient air quality standards, and whether the corresponding applications require a case-by-case analysis of a violation of the ozone standards is irrelevant in these matters under 20.1.4.400 NMAC.

Order Granting In Part Motion In Limine, at 2 (November 8, 2021).

In written testimony, Guardians’s witness Jeremy Nichols submitted testimony raising additional concerns regarding the sufficiency of the public notice of the Chaco permit and whether NMED met environmental justice mandates in evaluating the impacts from the Draft Permits. Guardians Ex. 1 at 6-9, 14-15. Mr. Nichols amended his testimony to remove comments on truck loading at the Carracas facility, as that activity is not permitted at that facility. Guardians Notice of Errata.

At the hearing, Guardians’s counsel, Matthew Nykiel, confirmed that the written technical testimony submitted by NMED and/or Harvest resolved several of the issues Guardians had raised in its comment letters and its written testimony. Specifically, Mr. Nykiel confirmed that the following issues had been resolved: 1) opacity limits in Condition A111 for the Draft Permits; 2) that the permits do not address all points of air pollution, including pneumatic

controllers and adjacent oil and gas wells for the Draft Permits; and 3) the publication of legal notice for the Chaco proposed permit. Tr. 31:13-22.

Accordingly, Guardians carried only the following issues through to the hearing:

- Adequacy of legal notice for the Chaco Compressor Station;
- Enforceability of startup, shutdown, and maintenance and malfunction (“SSM/M”) emission limits (both facilities);
- Periodic monitoring for hourly NO_x emissions from engines (both facilities) and hourly VOC emissions from truck loadout (Chaco);
- Compliance with the National Ambient Air Quality Standards; and
- Whether NMED met its environmental justice requirements.

CLOSING ARGUMENT

I. BURDEN OF PERSUASION AND STANDARD FOR ISSUANCE

The procedural standards for a public hearing involving a permit issuance, renewal, or modification are governed by 20.1.4.1. *et seq.* NMAC. The regulation clearly defines the applicable burdens of persuasion, as follows:

Burden of Persuasion: The **Applicant** or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The **Division** has the burden of proof for a challenged condition of a permit or license which the Department has proposed. **Any person** who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.

20.1.4.400.A.(1) NMAC (emphasis added). The Hearing Officer is required to “determine each matter in controversy by a preponderance of the evidence.” 20.1.4.400.A.(3) NMAC.

Pursuant to N.M. Stat. Ann. § 74-2-7(C)(2), NMED can deny an application for an operating permit “if the source will not meet the applicable standards, rules or requirements pursuant to the Air Quality Control Act or the federal act.” The Operating Permit regulations provide five mandatory conditions for issuance of a permit, permit renewal, or permit modification. These conditions are:

- (1) The Department has received a complete application for a permit, permit modification, or permit renewal [. . .];
- (2) Except for administrative and minor permit modifications, the Department has complied with the requirements for public participation procedures under 20.2.70.401 NMAC;
- (3) Except for administrative amendments, the Department has complied with the requirements for notifying and responding to affected programs under 20.2.70.402 NMAC;
- (4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this Part; and
- (5) The Administrator has received a copy of the proposed permit and any notices required under 20.2.70.402 NMAC, and has not objected to issuance of the permit within the time period specified within that section.

II. ARGUMENT

A. The Proposed Permit Conditions Meet Requirements for Approval.

NMED, with the support of Harvest, has met its burden of proof for the challenged conditions of the proposed Draft Permits. In contrast, Guardians has failed to demonstrate that any of the conditions of the Draft Permits will not provide for compliance with the applicable requirements of the federal Clean Air Act, the state Air Quality Control Act, or the applicable regulations.²

i. The Public Notice for the Chaco Compressor Station Met Regulatory Requirements.

Guardians asserts that the public notice for Chaco is inadequate because an e-mail address was not included in the public notice. Guardians Am. Ex. 1 at 7-8. 20.2.70.401.C.(1)-(8) NMAC sets out the specific requirements for the public notice. These include the name, address, and telephone number of a person from whom interested persons may obtain information on the permit. *See* 20.2.70.401.C.(6). While NMED may, in some instances, include an email address for submittal of comments, it is not required to do so pursuant to the regulations. Address and telephone contact information was provided for NMED via Ms. Bajracharya as required. [Chaco AR 8, 601]. Therefore, the notice was adequate.

ii. The SSM/M Emissions Limits are Enforceable as a Practical Matter.

Guardians asserts that the startup, shutdown, maintenance and malfunction (“SSM/M”) emissions are not enforceable as a practical matter. Guardians Am. Ex. 1 at 12-14. In particular, Guardians raised concerns regarding the enforceability of the SSM/M emission limits for

² To the extent that Guardians maintains any of the conceded challenges to the proposed conditions, detailed responses to those arguments are contained in Harvest Am. Ex. 2 and NMED Ex. 1, 3, 5, 6, and 9.

blowdowns or venting activities because the “permits do not seem to specify a clear enough or specific enough methodology to ensure that VOC emissions are consistently and accurately measured” Tr. 149:21-23 (Nichols). Guardians’s concerns are unfounded.

As an initial matter, Guardians mischaracterizes the EPA Order at Guardians Exhibit 8. Guardians interprets that order to support their argument that a draft permit must “specify how particular emissions must be calculated for purposes of ensuring practical enforceability.” Guardians Am. Ex. 1 at 12. However, in that order, EPA granted the petitioner’s claim for objection to a draft permit because the permit failed to provide a method for calculation of an annual emission limit applicable to the *entire facility*. EPA clarified that its concerns centered on the failure to specify how the entire facility’s emissions would be calculated *and* that it was unclear whether all actual emissions would be included. Guardians Ex. 8 at 10, 17. In contrast, the Draft Permits clearly require that actual emissions from all sources of SSM/M emissions are monitored, recorded, and reported. [Chaco AR 7, 561-562; Carracas AR 8, 330-332].

The SSM/M emission limits for the Chaco and Carracas facilities were established in the NSR permits and are being incorporated into the Draft Permits. Harvest Am. Ex. 2 at 8:5-8. Startup, shutdown, and maintenance (“SSM”) emissions, as used in the Draft Permits, are those emissions that result from scheduled maintenance of the turbines and/or engines or with temporarily dropping one of those units from service. Harvest Am. Ex. 2 at 8:5-8. In contrast, startup and shutdown activities that are unplanned result in malfunction emissions. Harvest Am. Ex. 2 at 8:8-9.

The Draft Permits include the methods – *i.e.*, monitoring, recordkeeping and reporting – for determining compliance with the SSM/M emission limits. Condition A107 and the General Conditions in the Draft Permits require significant monitoring, recordkeeping, and reporting to

ensure compliance with the emission limits. [Chaco AR 7, 561-562; Carracas AR 8, 330-332].

As Mr. Newby's testimony summarized, the Draft Permits include the following requirements:

- They require that Harvest monitor the blowdown and malfunction events.
- They require that Harvest perform an annual inlet gas analysis.
- They require that Harvest calculate rolling 12-month emission totals (each month they are required to calculate emissions for the previous 12 months) for comparison with the permit limit.
- They require that Harvest keep records of all data, test results, and calculations.
- Finally, they require semi-annual reporting of the emissions to the NM [Air Quality Bureau].

Harvest Am. Ex. 2 at 8:25-9:3.

The methodology for calculating the annual VOC emissions from an SSM/M event is based on the equipment that is being vented. NMED Ex. 3 at 4:8. The volume of gas vented during an SSM/M event is determined based on the known, previously calculated volume of gas contained in the equipment and piping being vented. NMED Ex. 3 at 4:9. Each event is recorded, and the total VOC emissions are calculated based on the most recent gas analysis.

Harvest Am. Ex. 2 at 8:10-20. As Mr. Newby testified, the "blowdown volumes from these events have been calculated or can be calculated in the case of unforeseen events, and that as a result, SSM and malfunction emissions are fairly easy to determine." Tr. 48:15-18. In addition, this methodology is detailed in the application (Section 6). [Chaco AR 1, 040-041; Carracas AR 1, 046-047].

Guardians attempts to create an issue where there is none. As supported by the testimony from Mr. Nellessen for NMED and Mr. Newby for Harvest, the calculation of the emissions is straightforward and a detailed methodology of how to do that calculation is not necessary in the permit to ensure that Harvest accurately calculates its emissions. Indeed, for Harvest to report its SSM/M emissions in its semi-annual reports, it must calculate and accurately report the emissions, or face potential enforcement. As demonstrated, the Draft Permits include the

methods for determining compliance with the SSM/M emission limits.

iii. The Monitoring Provisions in the Draft Permits Ensure Compliance with the Emission Limits.

1. Engines

Guardians provided a general comment that the permits appear to fail to provide sufficient monitoring to ensure compliance with the hourly nitrogen oxide emissions for the engines. [Chaco AR 11, 608; Carracas AR 10, 388]. Guardians presented no testimony on the monitoring provisions in the permits and did not attempt to explain why the proposed monitoring provisions are inadequate. Guardians's comment is without support or merit.

The permits contain adequate periodic monitoring to ensure compliance with the short-term nitrogen dioxide (NO₂) limits. At both facilities, Harvest is required to conduct periodic emissions testing to measure the nitrogen oxides emitted (annually at Chaco, quarterly at Carracas), which will assess compliance with the emission limits. [Chaco AR 7, 573-575; Carracas AR 8, 334-335]; Harvest Am. Ex. 2 at 12:4-8. In addition, opacity limits are placed on the engines/turbines and operation in compliance with the opacity limits indicates compliance with emission limits. [Chaco AR 7, 563-565; Carracas AR 8, 333-334]; Harvest Am. Ex. 2 at 12:10-14.³ Together, these provisions provide sufficient monitoring to assess and ensure compliance with the emission limits.

2. Truck Loadout

Guardians commented that the monitoring is insufficient to ensure compliance with the hourly emission limit for truck loadout activities at Chaco. [Chaco AR 11, 608]. This hourly

³ In his written and oral testimony, Mr. Newby stated that the engines and the turbines at the facilities were permitted based on NO_x/NO₂ guarantees from the manufacturer. Harvest Am. Ex. 2 at 12:16; Tr. 50:23-24. As to Chaco, the application clarifies that the NO_x emissions in the application were carried forward from previous applications and permits, which occurred because the turbines were permitted originally in 1990 and the data sheets were not available to Harvest. Accordingly, Harvest withdraws this specific testimony as to the Chaco facility.

limit is no longer included in the permit, which Harvest had included as an hourly emission calculation in its permit application for truck loadout events at Chaco. [Chaco AR 1, 017]. NMED originally transferred this into the emission limit table at A107.A. [Chaco AR 7, 560]. However, NMED has removed the hourly emission limit for truck loadout. NMED Ex. 16 at A7, Table 106.A. (Unit L1 and Unit L1 (AOS)). NMED's witness, Ms. Bajracharya testified:

The change makes the permit consistent with the [Air Quality Bureau] monitoring protocol for tanks and loading as well as consistent with other NSR and Title V permits issued by [Air Quality Bureau]. The appropriate limit for this type of operation is the imposed annual emission limit.

Tr. 87: 8-12. Therefore, Guardians's comment is no longer applicable.

The draft Chaco permit includes an annual VOC emissions limit and includes sufficient monitoring and recordkeeping provisions, such as monthly monitoring of throughput, to ensure compliance with that annual limit. *See* NMED Ex. 16 at A16-A17 (Condition A203.E.).

iv. NMED Met Its Environmental Justice Requirements.

The environmental justice requirements were met in the permitting process for each facility. Guardians asserted general concerns regarding environmental justice for both permits relating to New Mexico Executive Order 2005-056 ("EO 2005-056"). Tr. 150:20-22; Guardians Am. Ex. 1 at 14. EO 2005-056 includes requirements for departments, including the Environment Department, related to environmental justice concerns. These requirements include "provid[ing] meaningful opportunities for involvement to all people regardless of race, color, ethnicity, religion, income, or education level" and providing notices in Spanish. EO 2005-056 also requires "utiliz[ing] available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities."

As NMED witness Ms. Olson explained, NMED utilized NMED policy 07-13, Public Participation, to address the environmental justice concerns. NMED Ex. 1 at 5:1-2. Ms. Olson testified:

For each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is a 4 mile circle around the facility except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as number of households, per capita income, percent of Linguistically Isolated Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed.

NMED Ex. 1 at 5:2-8. In addition, notices of hearing were provided in Spanish and English. [Chaco AR 20-23, 626-692; Carracas AR 19-22, 406-463]; NMED Ex. 17. Guardians has not demonstrated how this analysis has not met the requirements of EO 2005-056.

The Operating Permit Regulations do not require compliance with EO 2005-056 for issuance of an operating permit. *See* 20.2.70.400.A NMAC. Yet, NMED followed its policy for Public Participation that goes above and beyond the public participation provisions in the regulations. Moreover, by its own terms, EO 2005-056, does not “create a private right of action to enforce any provision of this Order” Accordingly, Guardians has not met its burden that the Draft Permits should be denied on environmental justice grounds.

v. The Draft Permits Ensure Compliance with the National Ambient Air Quality Standards (“NAAQS”).

Guardians originally commented that “NMED has not demonstrated that recent new source review permitting actions will lead to emissions that cause or contribute to violations of the [NAAQS], including standards for ground-level ozone and nitrogen dioxide.” [Chaco AR 11, 608]. However, on its face, this comment – regarding NSR permits – is inapplicable to the operating permits at issue in this matter and is irrelevant. Mr. Nichols’s written testimony asserts

that the ozone NAAQS is an applicable requirement, and “[w]hile the draft [Chaco] permit states under section A103.C that compliance with the permit demonstrates compliance with the NAAQS, it is not clear that any analysis of ozone impacts has been conducted such that this statement is valid.” Guardians Am. Ex. 1 at 9-11.

Guardians appears to be seeking to impose construction/NSR permitting requirements to an operating permit regime. This interpretation is not supported by the regulations and is inconsistent with the separate purposes of the distinct programs. Where a source seeks to increase its permitted emissions above a certain level, it must first obtain a construction/NSR permit. 20.2.72.200.A. NMAC. NSR applications must include a detailed analysis demonstrating compliance with the NAAQS, which may include modeling. 20.2.72.203.A.(4) NMAC.

An operating permit, in contrast, generally does not permit new emissions but incorporates emission limits permitted through other programs, such as an NSR permit. For example, the Chaco proposed operating permit incorporates the emission increases that were permitted in NSR Permit 0759-M6 in 2018. *See* NMED Ex. 15 at 2-3. No new emissions are being permitted. This distinction is reflected in what is required for an application for an operating permit. For NAAQS, the Operating Permit Regulations only require that the application include a certification of compliance with the NAAQS based on a certification of compliance with the relevant terms and conditions of the current operating permit. *See* 20.2.70.300.D.(10)(a)(ii). An NSR-level analysis is not required. Condition A103.C of the Chaco draft permit reflects this:

Compliance with the terms and conditions of this permit regarding source emissions and operation demonstrate compliance with national ambient air quality standards specified at 40 CFR 50, which were applicable at the time air dispersion modeling was performed for the facility’s NSR Permit 0759-M6.

NMED Ex. 16 at A2.⁴

Moreover, NMED testified that compliance with the NAAQS was demonstrated. Mr. Peters testified regarding the assessment performed by NMED:

For existing sources that have not been modified, monitoring may be more appropriate than modeling. New Mexico's Title V regulation does not specify which method to use during permit renewal, but EPA practice is to address ongoing compliance with the use of regional monitoring. Chaco Compressor Station and Carracas CDP Compressor Station are not modifying their facilities currently. Their emissions have become part of the regional monitoring record. Reference to this monitoring is an appropriate method for these facilities to demonstrate compliance with the NAAQS.

Tr. 90:1-11. Mr. Peters testified that the compliance with the nitrogen dioxide standard was confirmed through the method outlined above. Tr. 90:12-24. Moreover, as Mr. Peters confirmed, the monitoring data shows all pollutants are in attainment with the NAAQS. Tr. 90:25-91:1. Plus, the facilities are not located in a designated non-attainment area for any criteria pollutant, including the 8-hour ozone standard.⁵ Mr. Peters summarized his review and made the following conclusion regarding NAAQS compliance:

Based on the air dispersion modeling analyses that were required to be submitted as part of the applications for the NSR permits and that were accepted by the Department, and the air monitoring data demonstrating compliance with an attainment of the NAAQS, and the current NSR permit conditions, the compliance demonstration has been made and the permits may be issued.

Tr. 91:4-10.⁶ As shown, the conditions of the Draft Permits provide for compliance with the

⁴ The draft permit for the Carracas facility includes a similar statement at A103.C. ("Compliance with the terms and conditions of this permit regarding source emissions and operation demonstrate compliance with national ambient air quality standards specified at 40 CFR 50, which were applicable at the time air dispersion modeling was performed for the facility's NSR Permit 0968-M4.").

⁵ See <https://www.env.nm.gov/air-quality/nonattainment-areas/>

⁶ Guardians has provided no testimony or evidence that the permitting analyses conducted in the NSR permitting were inadequate or were not met. To the extent that Guardians attempts to argue in its Closing Argument that the previous NSR permitting assessment was inadequate to demonstrate compliance with the ozone NAAQS, that argument is squarely addressed by the Final Order of the Environmental Improvement Board in EIB No. 20-21(A) and 20-33(A) where the Environmental Improvement Board determined that minor sources with ozone precursor

NAAQS.

B. NMED's Decision to Issue the Draft Permits Should be Upheld.

Harvest has met its burden of proof that the permit should be issued and not denied. The Draft Permits meet the conditions for issuance under 20.2.70.400.A. NMAC and should be recommended for issuance.

i. Complete Application.

As to the applications for the Draft Permits, each application meets the regulatory requirements of a complete application per 20.2.70.300.D. NMAC. As detailed above, Harvest submitted several revisions to the permit applications to ensure that each covered all required sources and activities, as well as to respond to comments from NMED. The administrative record contains the complete permit applications and correspondence between NMED and Harvest regarding the permit applications. After its review of these hundreds of pages of documentation and communications, NMED determined that each of the applications was administratively complete and contained all required materials. [Chaco AR 4, 528-531; Carracas AR 3, 299-300]. NMED's witness, Ms. Bajracharya, testified to this determination. NMED Ex. 5 at 2:10-3:7; NMED Ex. 6 at 2:15-22.

ii. Public Participation.

The public participation procedures under 20.2.70.401 NMAC were met for both Chaco and Carracas permits. Specifically, 30 days were provided for public comment. [Chaco AR 8, 601; Carracas AR 7, 367]. The notice of the public comment period was given by publication in a newspaper of general circulation in the area where the sources are located and contained all required information. [Chaco AR 10, 604-606; Carracas AR 9, 384-386]. The required notice of

emissions less than 250 tpy in an ozone attainment area do not, by definition, "cause or contribute to" ozone concentrations in excess of the NAAQS. EIB Final Order at 22-23 (Jan. 22, 2021).

the hearing was provided at least 30 days in advance in the local newspaper, [Chaco AR 20-23, 626-692; Carracas AR 19-22, 406-463]; NMED Ex. 17, and directly to interested parties, [Chaco AR 15-19, 616-625; Carracas AR 14-18, 397-404, 457].

A hearing was held on the Draft Permits on November 15, 2021. The hearing was held virtually via Zoom because of the COVID-19 pandemic. Order Amending Scheduling Order (August 6, 2021).

iii. Notification to Affected Programs.

NMED provided notification to affected programs as required under 20.2.70.402 NMAC. [Chaco AR 9, 602-603; Carracas AR 8, 368-383].

iv. Conditions Provide for Compliance with Applicable Requirements and Requirements of Title 20, Chapter 2 NMAC.

The conditions of the Draft Permits have been reviewed and approved by NMED's technical staff for compliance with applicable requirements and the requirements of Title 20, Chapter 2 NMAC. The application process, which requires a detailed and comprehensive application and both a completeness and a technical review by NMED, identified the applicable requirements for each facility. [Chaco AR 1-7, 001-599; Carracas AR 1-6, 001-365]. The Draft Permits include the emission and process limits for each facility, identify the applicable requirements and methods for assessing compliance on a regular basis, and set forth extensive monitoring, recordkeeping, and reporting requirements to provide for compliance with those requirements. The facility-specific conditions in Part A are reinforced by the Part B-General Conditions, which include standard language applicable to all sources. [Chaco AR 7, 554-599; Carracas AR 6, 322-365]. The extensive application, NMED's experienced review, and the detailed and prescriptive permit terms provide for compliance with applicable requirements and regulations.

As detailed above, Guardians's comments asserting that a specific condition or the permit do not provide for compliance with an applicable requirement or regulation are not persuasive.

See Section II.A. for detailed response to each comment.

v. EPA Administrator Notification.

The Draft Permits were provided to EPA by Harvest's consultant on the following dates: Chaco on December 7, 2019 and Carracas on January 31, 2020 after NMED determined that the applications were complete. EPA was also provided notice of the hearing. [Chaco AR 16, 617; Carracas AR 15, 457]; Tr. 80:11.

Conclusion

Harvest has met its burden in support of issuance of the Draft Permits. NMED has met its burden of proof for the conditions that it has proposed for the Draft Permits and Guardians has not met its burden that any permit condition is inadequate, improper, or invalid. Based on the foregoing, Harvest requests that the Hearing Officer recommend that the Secretary uphold NMED's decision to issue the Draft Permits.

PROPOSED FINDINGS OF FACT

A. Applicant and Facilities

1. Harvest Four Corners LLC (“Harvest”) is an oil and gas gathering company with operations in the San Juan Basin of Northwest New Mexico. Harvest Ex. 1 at 2.

2. Harvest owns and operates the Chaco Compressor Station (“Chaco” or “Chaco facility”), an existing oil and gas facility located in San Juan County, New Mexico, approximately 1 mile south of Bloomfield. The facility compresses pipeline natural gas for transmission. Harvest Ex. 1 at 3.

3. Chaco currently operates under an New Source Review (“NSR”) construction permit, 0759-M6, dated October 12, 2018 and a Title V operating permit, P236-R2, dated August 19, 2016. [Chaco AR 1, 005]; Harvest Am. Ex. 2 at 3.

4. Harvest also owns and operates the Carracas Central Delivery Point (“Carracas” or “Carracas facility”), an existing oil and gas facility located in Rio Arriba County, New Mexico, approximately 21 miles northeast of Blanco. The facility compresses and dehydrates pipeline quality natural gas received from independent producers. Harvest Ex. 1 at 4.

5. Carracas currently operates under NSR construction permit, 968-M5-R7, issued October 12, 2017, and Title V operating permit, P168-R3, issued January 5, 2016. [Carracas AR 1, 005]; Harvest Am. Ex. 2 at 5.

B. Chaco Compressor Station Operating Permit Application and NMED Review

6. Harvest submitted a Title V modification application on October 1, 2019 for the Chaco facility. The modification incorporates changes submitted and approved into Chaco’s NSR permit in 2018. The changes include increasing condensate throughput at the facility, adding one pig receiver, and increasing SSM emissions (to allow for a richer gas stream). [Chaco

AR 1, 001-211]; Harvest Am. Ex. 2 at 4.

7. The New Mexico Environmental Department (“NMED” or “Department”) received the application on October 2, 2019 and deemed the application administratively complete on November 25, 2019. [Chaco AR 4, 528].

8. NMED reviewed the application and prepared the Chaco Title V permit under consideration (proposed Permit Number P236-R3), with the initial draft permit issued on February 23, 2021. [Chaco AR 7, 554-599]; Harvest Am. Ex. 2 at 4.

9. Notice of the permit was published in the *Farmington Daily Times* on February 19, 2021. The notice stated that NMED had made a preliminary determination that the facility will comply with state and federal requirements as well as noted its preliminary intent to issue the operating permit. Interested persons were advised that they could obtain the draft operating permit, submit written comments, or request a public hearing. [Chaco AR 10, 604-606].

10. On February 17, 2021, NMED provided notice of the draft Chaco permit to the affected parties. [Chaco AR 9, 602-603].

11. On December 7, 2019, the application was sent to the Environmental Protection Agency.

12. In April 2020, the Chaco permit application was revised to add an alternative operating scenario for condensate throughput, which was included in the existing NSR permit, but inadvertently left out of the original Title V application. [Chaco AR 2, 212-527]; Harvest Am. Ex. 2 at 4.

13. In May 2020, the application was changed from a modification application to a renewal and modification application. [Chaco AR 35, 672-673]; Harvest Am. Ex. 2 at 4.

14. In September 2021, a second revision to the application was provided to the

NMED. At NMED's request, 14 pneumatic controllers were included in Table 2-B of the application as insignificant sources. [Chaco AR 41, 693-694]; Harvest Ex. 2 at 4.

15. In the most recent version of the draft Chaco permit, the hourly VOC emission limit on truck loadout was removed. *See* NMED Ex. 16 at A7, Table 106.A. (Unit L1).

C. Carracas CDP Compressor Station Operating Permit Application and NMED Review

16. Harvest submitted a Title V renewal application on December 7, 2019 for the Carracas facility. The renewal incorporates administrative changes previously submitted and approved into Carracas's NSR permit, which included like-kind replacement of three engines. [Carracas AR 1, 001-252]; Harvest Am. Ex. 2 at 5-6.

17. NMED received the application on December 10, 2019 and deemed the application administratively complete on January 29, 2020. [Carracas AR 3, 299].

18. NMED reviewed the application and prepared the Carracas Title V renewal permit under consideration (proposed Permit Number P168-R4). [Carracas AR 6, 322-363]; Harvest Am. Ex. 2 at 5-6.

19. In March 2021, the application was revised to include the removal of four engines, the removal of four dehydrators and four associated reboilers, and the removal of two flares, units which had already been removed from the NSR permit. [Carracas AR 2, 253-298]; Harvest Am. Ex. 2 at 6.

20. Notice of the permit application was published in the *Farmington Daily Times* on April 25, 2021. The notice stated that NMED had made a preliminary determination that the facility will comply with state and federal requirements as well as noted its preliminary intent to issue the operating permit. Interested persons were advised that they could obtain the draft operating permit, submit written comments, or request a public hearing. [Carracas AR 9, 384-

386].

21. On April 21, 2021, NMED provided notice of the draft Carracas permit to the affected parties. [Carracas AR 8, 368-383].

22. On January 31, 2020, the application was sent to the Environmental Protection Agency.

23. In September 2021, a second revision to the application was provided to NMED. At NMED's request, 24 pneumatic controllers were added to the application in Table 2-B as insignificant sources. [Carracas AR 32, 464-465]; Harvest Am. Ex. 2 at 6.

D. WildEarth Guardians Comments and Request for Hearing

24. On March 19, 2021, WildEarth Guardians ("Guardians") submitted comments and a request for public hearing to NMED related to the renewal and modification of the Title V Operating Permit for the Chaco Compressor Station. [Chaco AR 11, 607-608].

25. On May 21, 2021, Guardians submitted comments and a request for public hearing to NMED related to the renewal of the Title V Operating Permit for the Carracas Central Delivery Point. [Carracas AR 10, 387-388].

26. For both the Chaco and Carracas facilities, Guardians took issue with: 1) the enforceability of startup, shutdown, and malfunction emission limits; 2) the use of natural gas for opacity limit compliance; 3) inclusion of "all points of air pollution" in the permit; and 4) periodic monitoring to ensure compliance with applicable hourly emission limits. [Chaco AR 11, 608; Carracas AR 10, 388].

27. For only the Chaco facility, Guardians alleged that NMED failed to demonstrate that recent new source review permitting actions will not lead to emissions that cause or contribute to violations of the national ambient air quality standards. [Chaco AR 11, 608].

28. Guardians provided no recommendations for inclusion of additional permit terms or requirements for inclusion in the Chaco or Carracas draft permits (together, the “Draft Permits”). *See* [Chaco AR 11, 607-608; Carracas AR 10, 387-388].

E. *Procedural Timeline*

29. On June 11, 2021, NMED issued a Notice of Hearing and Appointment of Hearing Officer for the Chaco (AQB 21-37) and Carracas (AQB 21-43) matters.

30. Following a virtual scheduling conference attended by the parties, the Hearing Officer issued a scheduling order on July 20, 2021 setting a public hearing to be held virtually on November 15, 2021 (the “Hearing”).

31. On August 6, 2021, the Hearing Officer issued an amended scheduling order instructing the Air Quality Bureau of the NMED to provide an in-person location for members of the public to view and participate in the virtual hearing.

32. On October 12, 2021, the Notice of Public Hearing was posted in both English and Spanish to NMED’s “Docketed Matters” website. NMED Ex. 1 at 2:9-13.

33. The Notice of Public Hearing was published in both English and Spanish in the *Farmington Daily Times* on Oct 9, 2021, in the *Albuquerque Journal* on Oct 14, 2021, and in the *Rio Grande Sun* on October 14, 2021. [Chaco AR 20-23, 626-692; Carracas AR 19-22, 406-463]; NMED Ex. 17; NMED Ex. 1 at 2.

34. On October 12, 2021, NMED sent public service announcements in English regarding the Notice of Public Hearing to KISZ in San Juan County, KSJE public radio in San Juan County, and to KLDK in Rio Arriba County. [Chaco AR 24-26, 641-654; Carracas AR 23-25, 421-434]; NMED Ex. 1 at 3:13-18.

35. On October 12, 2021, NMED sent public service announcements in Spanish

regarding the Notice of Public Hearing to KRZE in San Juan County and to KDCE/KYBR in Rio Arriba County. [Chaco AR 24-26, 641-654; Carracas AR 23-25, 421-434]; NMED Ex. 1 at 3:9-15.

36. On October 12, 2021, NMED emailed the Notice of Public Hearing in English and in Spanish to the State of Colorado, the San Juan County Manager, the Rio Arriba County Manager, the US EPA, the Southern Ute representative, the Jicarilla Apache representative, the Navajo Nation, the city of Bloomfield city office, and both J. Nichols and M. Nykiel from Guardians. [Chaco AR 15-19, 616-625; Carracas AR 14-18, 397-404, 457]; NMED Ex. 1 at 2:19-3:8.

37. On October 28, 2021, Harvest filed a Motion in Limine requesting that the Hearing Officer issue an order precluding Guardians from offering testimony or other evidence related to the national ambient air quality standards (“NAAQS”).

38. Guardians filed a response on November 4, 2021 opposing Harvest’s Motion in Limine and a hearing was heard on the motion on November 5, 2021.

39. On November 8, 2021, the Hearing Officer issued an order granting in part Harvest’s Motion in Limine, issuing the following order:

WildEarth Guardians’s testimony related to the discrete issue of whether the Chaco Compressor Station and the Carracas CDP Compressor Station cause or contribute to a violation of the ozone national ambient air quality standards or New Mexico ambient air quality standards, and whether the corresponding applications require a case-by-case analysis of a violation of the ozone standards is irrelevant in these matters under 20.1.4.400 NMAC.

Order Granting In Part Motion In Limine, at 2 (November 8, 2021).

40. The Hearing began on November 15, 2021 and concluded that same day.

F. Summary of Testimony

41. Guardians filed written testimony of Jeremy Nichols, which addressed the issues

raised in Guardians's comment letters along with a concern regarding the publication of legal notice for the Chaco proposed permit. Harvest Am. Ex. 1. Mr. Nichols testified at the hearing.

42. At the hearing, counsel for Guardians informed the Hearing Officer that the direct testimony of Harvest and NMED resolved Guardians's issues related to opacity limits in Condition A111 for the Draft Permits, the inclusion of all point sources of emissions for the Draft Permits, and the publication of legal notice for the proposed Chaco permit. Tr. at 31:13-22.

43. NMED filed written testimony of Kirby Olson, James Nellessen, Urshula Bajracharya, and Eric Peters. NMED Ex. 1, 4, 5-6, 8. Mr. Olson, Mr. Nellessen, Ms. Bajracharya, and Mr. Peters testified at the hearing.

44. Harvest filed written testimony of Travis Jones and James Newby. Harvest Ex. 1; Harvest Am. Ex. 2. Mr. Jones and Mr. Newby both testified at the hearing.

45. In his written and oral testimony, Mr. Jones provided an overview of Harvest as well as an overview of the Chaco and Carracas facilities and their operations. Harvest Ex. 1 at 2-4.

46. In his written and oral testimony, Mr. Newby testified on Title V permitting, the preparation and substance of the applications, and responded to the arguments raised by Guardians in its comment letters. Harvest Am. Ex. 2 at 2-13.

G. WildEarth Guardians's Challenges to the Draft Permits

i. Adequacy of Legal Notice for Chaco

47. Guardians asserted that the legal notice for Chaco was inadequate because it did not include an e-mail address or indicate that comments would be accepted by e-mail. Tr. 134:19-22.

48. NMED testified regarding the public notice of the Chaco permit, NMED Ex. 6,

4:4-10, and a copy of the notice was provided in the administrative record, [Chaco AR 10, 600-601].

ii. Startup, Shutdown, Maintenance and Malfunction Emissions Enforceability

49. Guardians raised concerns that the startup, shutdown, maintenance and malfunction (“SSM/M”) emission limits, especially for venting or blowdowns, under Condition A107 in the Draft Permits are unenforceable as a practical matter. [Chaco AR 11, 608; Carracas AR 10, 388].

50. At the hearing, Guardians’s witness testified that “the permits do not seem to specify a clear enough or specific enough methodology to ensure that VOC emissions are consistently and accurately measured for [SSM/M] events” Tr. 149:20-24.

51. NMED provided written and direct testimony that the methodology for calculation of SSM/M venting/blowdown events “is based on the engineering design of the equipment being depressurized [and] [t]he volume of vented gas is calculated based on the volumes contained within the various equipment that are being depressurized, including the compressors and associated piping.” NMED Ex. 3 at 4:7-9.

52. Harvest’s witness testified that the emission limits in Condition A107 of the Draft permits are enforceable. Harvest Am. Ex. 2 at 9:8-10.

53. Harvest’s witness testified at the hearing:

The blowdown volumes from these events have been calculated or can be calculated in the case of unforeseen events, and that as a result, SSM and malfunction emissions are fairly easy to determine. By keeping track of the number of events, one can use the blowdown volumes and gas composition to determine emissions.

Tr. 48:15-20.

54. NMED and Harvest’s witnesses testified regarding the monitoring, recordkeeping,

and reporting requirements of the Draft Permits for the SSM/M emission limits. Tr. 48:21-49:10; 95:14-96:9.

iii. Periodic Monitoring for Engines

55. Guardians provided a general comment that the Draft Permits appear to fail to provide sufficient monitoring to ensure compliance with the hourly nitrogen oxide emissions for the engines, [Chaco AR 11, 608; Carracas AR 10, 388], but did not provide technical testimony on the comment.

56. Harvest and NMED's witnesses testified regarding the periodic testing requirements that are used to verify the hourly and annual emission limits. Harvest Am. Ex. 2 at 12:4-8; NMED Exhibit 5 at 7:10-14.

iv. Periodic Monitoring for Truck Loadout

57. Guardians commented that the monitoring conditions are insufficient to ensure compliance with the hourly emission limit for truck loadout activities at Chaco. [Chaco AR 11, 608; Carracas AR 10, 388].

58. NMED removed the hourly emission limit for truck loadout at Chaco from the draft permit. NMED Ex. 16 at A7, Table 106.A.

59. NMED's witness testified that the inclusion of the hourly limit was an error and that removal is appropriate:

The change makes the permit consistent with the [Air Quality Bureau] monitoring protocol for tanks and loading as well as consistent with other NSR and Title V permits issued by [Air Quality Bureau]. The appropriate limit for this type of operation is the imposed annual emission limit.

Tr. 87:8-12.

v. Environmental Justice

60. Guardians testified "our concern is that the Environment Department has not

demonstrated that environmental justice will actually be achieved.” Tr. 150:20-22.

61. NMED’s witness Ms. Olson testified that NMED utilized NMED policy 07-13 to address environmental justice concerns. NMED Ex. 1 at 5:1-2.

62. Ms. Olson testified:

For each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is a 4 mile circle around the facility except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as number of households, per capita income, percent of Linguistically Isolated Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed.

NMED Ex. 1 at 5:2-8.

63. Notices of hearing were provided in Spanish and English. [Chaco AR 20-23, 626-692; Carracas AR 19-22, 406-463]; NMED Ex. 17.

vi. NAAQS Compliance

64. Guardians’s witness Mr. Nichols testified that “[w]hile the draft [Chaco] permit states under section A103.C that compliance with the permit demonstrates compliance with the NAAQS, it is not clear that any analysis of ozone impacts has been conducted such that this statement is valid.” Guardians Am. Ex. 1 at 9-11.

65. Harvest’s witness Mr. Newby testified that the permit applications included the required certification in 20.2.70.300.D.(10)(a)(ii) NMAC certifying compliance with the NAAQS. Tr. 51:22-23; Harvest Am. Ex. 2 at 13:9-28.

66. NMED witness Mr. Peters testified regarding the process that NMED uses to determine compliance with the NAAQS (Tr. 89:14-91:1), and testified that the draft permits demonstrate compliance with the NAAQS:

Based on the air dispersion modeling analyses that were required to be submitted

as part of the applications for the NSR permits and that were accepted by the Department, and the air monitoring data demonstrating compliance with an attainment of the NAAQS, and the current NSR permit conditions, the compliance demonstration has been made and the permits may be issued.

Tr. 91:4-10.

H. *Permit Review*

67. NMED staff testified that the facilities, as represented in the applications, demonstrate compliance with all federal and state regulations. NMED Ex. 3 at 6:23-7:2; NMED Ex. 5 at 8:2-3; NMED Ex. 6 at 7:8-9.

68. NMED staff testified that the operations of the facilities, as represented in the applications, incorporate conditions for monitoring, recordkeeping, and reporting in previously issued NSR permits as required during an operating permit renewal. NMED Ex. 5 at 8:3-5; NMED Ex. 6 at 7:9-11.

69. NMED staff testified that the permits comply with all air quality regulations and contains demonstrations of compliance for all conditions and emission limits to ensure compliance with Ambient Air Quality Standards. NMED Ex. 5 at 8:8-10; NMED Ex. 6 at 7:4-16.

70. NMED staff testified that the Secretary should uphold the NMED's decision to approve issuance of the permits. NMED Ex. 1 at 5:15-17; NMED Ex. 3 at 7:2-4; NMED Ex. 5 at 8:10-11; NMED Ex. 6 at 7:16-17; NMED Ex. 8 at 3:7-11.

PROPOSED CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over the subject matter of the applications for the Chaco and Carracas facilities and the parties to this proceeding and is authorized by the New Mexico Air Quality Control Act to issue or deny permits for new and existing facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-2-7; 20.2.70.400.G NMAC.

2. Harvest has the burden of proof that the Draft permits should be issued and not denied. 20.1.4.400.A.(1) NMAC.

3. NMED has the burden of proof for a challenged condition of a permit which the NMED has proposed. 20.1.4.400.A.(1) NMAC.

4. Guardians has the “burden of going forward to present an affirmative case” on the permit conditions it challenges as “inadequate, improper, or invalid.” 20.1.4.400.A.(1) NMAC.

5. Harvest submitted a complete application for the renewal and modification of the Chaco operating permit and renewal of the Carracas operating permit pursuant to 20.2.70.300 NMAC.

6. NMED’s administrative and technical reviews of the Chaco application and the Carracas application were thorough, complete, and sufficient to support the determination that each application was administratively and technically complete. 20.2.70.300.C. NMAC.

7. The Draft Permits include “terms and conditions sufficient to ensure compliance with the applicable standards, rules and requirements pursuant to the Air Quality Control Act and the federal act.” NMSA 1978, § 74-2-7(D)(2).

8. NMED complied with the requirements for public participation procedures under 20.2.70.401 NMAC with regard to public outreach and receiving public comment for the Chaco and Carracas permits.

9. NMED complied with the requirements for public notice for the Hearing under 20.1.4.200.C.(2) and 20.2.70.401 NMAC.

10. NMED and Harvest have complied with the requirements for notifying and responding to affected programs and the Environmental Protection Agency under 20.2.70.402 NMAC. 20.2.70.400.A.(3), (5) NMAC.

11. The Chaco and Carracas applications, the administrative record for each permit, and the Hearing establish that the conditions of each permit provide for compliance with all applicable requirements and the requirements of the air quality control regulations under Title 20, Chapter 2 NMAC. 20.2.70.400.A.(4) NMAC.

12. The Hearing was conducted in accordance with NMED's hearing procedures on permits in 20.1.4 NMAC.

13. The applications, the administrative record, and the Hearing contain no basis for denial or modification of the Draft Permits.

14. NMED has the authority to issue the Draft Permits. 20.2.70.400.A and 20.2.70.400.G NMAC.

15. Harvest has met its burden that the Draft Permits should be issued and not denied.

16. NMED has met its burden of proof for the challenged conditions of the Draft Permits.

17. Guardians has failed to meet its burden to prove that any conditions of the Draft Permits are inadequate, improper, or invalid.

18. The conditions of the Draft Permits include "emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance. . . ." 20.2.70.302.A.(1) NMAC.

19. Under the draft Chaco permit and the draft Carracas permit, the sources will "meet the applicable standards, rules or requirements pursuant to the Air Quality Control Act or the federal act." NMSA 1978 § 74-2-7(C)(2).

20. The Draft Permits should be issued.

CONCLUSION

For the foregoing reasons, Harvest respectfully requests that the Hearing Officer adopt these proposed findings of fact and conclusions of law, and make recommendations to the Secretary to uphold and approve NMED's decision to issue permit P239R3 for the Chaco Compressor Station and permit P168R4 for the Carracas CDP Compressor Station.

Respectfully submitted,

/s/ Jill H. Van Noord

Adam G. Rankin
Jill H. Van Noord
Holland and Hart LLP
110 N. Guadalupe, Suite 1
Santa Fe, NM 87501
(505) 954-7294
AGRankin@hollandhart.com
JHVanNoord@hollandhart.com

**ATTORNEYS FOR HARVEST FOUR
CORNERS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2021 a true and correct copy of **Harvest Four Corners, LLC's Closing Argument and Proposed Findings of Fact and Conclusions of Law** was served via electronic mail to the following:

Matthew A. Nykiel
WildEarth Guardians
3798 Marshall St. Ste. 8
Wheat Ridge, CO 80033
(303) 501-5763
mnykiel@wildearthguardians.org

Chris Vigil, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras Avenue, Suite 1000
Albuquerque, NM 87102
christopherj.vigil@state.nm.us

Madai Corral, Paralegal/Hearing Clerk
Pamela Jones, Hearing Clerk
New Mexico Environment Department
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, NM 87502
(505) 660-4305
Pamela.Jones@state.nm.us
Madai.Corral@state.nm.us

s/ Jill H. Van Noord

Jill H. Van Noord